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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/166837

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 22, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on October 20, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly discontinued the Petitioner's BC+ benefits effective July 1, 2015.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

;

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: Pang Thao Xiong  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On May 5, 2015, the agency received an alert of a wage discrepancy regarding Petitioner's employment with [REDACTED] Inc and [REDACTED].

3. On May 18, 2015, the agency pended the Petitioner's case for verification from [REDACTED].
4. On May 19, 2015, the agency issued a Notice of Proof Needed requesting verification of employment and income with [REDACTED]. The due date for the information was May 28, 2015.
5. On May 26, 2015, the Petitioner contacted the agency to request an extension on the verification to June 1, 2015.
6. On May 28, 2015, the agency incorrectly closed the Petitioner's case.
7. On June 1, 2015, the agency issued a Notice of Decision to the Petitioner informing him that his FS benefits would end effective July 1, 2015 due to failure to provide verification.
8. The agency re-pended the Petitioner's case.
9. On June 16, 2015, the agency received employment verifications from Staffworks but not from [REDACTED].
10. Effective July 1, 2015, the agency closed the Petitioner's FS case based on his failure to verify employment and income.

### DISCUSSION

A BC+ applicant/recipient has primary responsibility for providing verification needed in order to determine BC+ eligibility. Income Maintenance Manual (IMM) § 9.1.3.3 and BC+ Handbook (BCPH) § 9.8. For employment and verification, the agency generally requires a completed Employer Verification Form- Earnings from the employer and the most recent pay statements. BCPH § 16.4.4.

However, the IMM states that the agency may accept anything reasonable from the client and decide if it verifies the client's statement. IMM § 9.1.3.3. Further, the IMM and BCPH state that eligibility may not be denied when the client does not have the ability to produce verification. IMM § 9.1.3.3 and BCPH § 9.8. In addition, the agency is required to assist a client in obtaining verification if he has difficulty in obtaining it. IMM § 9.1.3.4 and BCPH § 9.8. When the client does not have the power to produce verification and the agency has not or cannot obtain the information, the agency is to use the best information available to process an application. Id.

In this case, the Petitioner testified that he has not worked for [REDACTED] since October, 2014. He has made numerous requests to the employer to obtain verification to provide to the agency. He testified that he has walked from Milwaukee to Mequon on at least two occasions to attempt to get the information. To date, the employer has not cooperated in providing the information. The Petitioner did request one extension from the agency which was granted by the agency. In addition, the agency did request the information directly from the employer but the agency received no response from the employer.

The agency closed the Petitioner's case for failure to verify income. The IMM and BCPH require the agency to determine eligibility based on the best information available when the employer is not being cooperative. In this case, the Petitioner testified that he has not been working since October, 2014 for [REDACTED]. The agency must use the best information available to verify this since the employer will not provide it, including the Petitioner's own statements and the state wage record. The agency must make a determination of the Petitioner's eligibility based on the best information on his income that is available. Therefore, I am remanding this to the agency to make a determination based on the best available information of the Petitioner's income and allowable expenses to determine whether he was eligible for BC+ benefits effective July 1, 2015. The agency must issue a new determination to the

Petitioner with new appeal rights. If the Petitioner does not agree with the agency's new determination, he must file another appeal.

### **CONCLUSIONS OF LAW**

The agency did not properly terminate the Petitioner's BC+ benefits effective July 1, 2015 for failure to verify employment and income. Because of the employer's lack of cooperation, the agency must use the best information available to verify income and make an eligibility determination.

**THEREFORE, it is**

### **ORDERED**

That this matter is remanded to the agency to take all administrative steps necessary to determine the Petitioner's eligibility for BC+ benefits effective July 1, 2015 based on the best information available to it, including but not limited to Petitioner's statements regarding his employment status and state wage record information. The agency shall issue a new Notice of Decision to the Petitioner and issue any BC+ benefits to which the Petitioner may be entitled. The notice shall also provide new appeal rights to the Petitioner. These actions shall be completed as soon as possible but no later than 10 days from the date of this decision.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 5th day of November, 2015

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on November 5, 2015.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability